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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 268

FRANK G. HYMAN, CLAIMANT,

Appellant,

vs.

ROBB TYLER, EMPLOYER, AND EAGLE INDEMNITY COMPANY, INSURER.

Appellees.

STATEMENT AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

Now comes Frank G. Hyman, appellant and claimant in this case, and petitioner for the allowance of an appeal from the final decision and judgment of the Court of Appeals of Maryland to the Supreme Court of the United States and makes the following statement of the basis upon which he contends that the Supreme Court of the United States has jurisdiction upon appeal to review the decision and judgment in question.

1. The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States in Judi-

cial Code, Section 237(a), as amended (January 31, 1928, c. 14, Sec. 1, 45 Stat. 54), the pertinent provisions of which are as follows:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, • • • where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon appeal."

2. The Maryland Statute, the validity of which, as judicially interpreted by the Court of Appeals of Maryland, and as amended by such judicial interpretation, and as applied and enforced in this case, is involved, is the "other cases" provision of the Workmen's Compensation Act of Maryland, Article 101, Section 48(3), Code of Public General Laws of Maryland, 1939 (Flack's 1943 Supp. to the Code, at p. 1144). As enacted, and effective on the date of appellant's injury, February 9, 1945, and applicable to this case, the provision (since amended by Laws of 1945, Ch. 336, and Laws of 1947, Ch. 895), reads as follows:

> "Other Cases—In all other cases in this class of disability the compensation shall be fifty per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment, or otherwise, if less than before the accident (but not to exceed eighteen dollars per week), payable during the continuance of such partial disability, but not to exceed three thousand dollars, and, subject to reconsideration of the degree of such impairment by the Commission on its own motion or upon application of any party in interest."

In construing that provision, and applying and enforcing it in this case, the Court of Appeals of Maryland referred to its discussion of the matter in its opinion in *Allen* v.

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Glenn L. Martin Co., decided the same day as this case, wherein the Court said (52 A. 2d. 605, 608, 610):

> "Appellant argues * * * that there should have been no limit less than $3,000 on the amount of permanent partial disability allowed. * * * that the Commission has the duty to determine the average weekly wage and the wage earning capacity and to fix the weekly payments at 50% of the difference between the two. * * * that the Commission has no power to limit the number of weeks as long as the permanent partial disability continues, and that the only limitation, unless there is a subsequent modification or death, is when the aggregate weekly payments reach the maximum fixed by the statute. He argues that to limit it otherwise is unconstitutional, * * *.
>
> "The statute under 'other cases,' and as interpreted by this Court, sets a maximum limit as to the amount of compensation to be allowed and gives to the Commission the right to determine the amount to be paid within this limit. * * *
>
> "In the case at bar, as the claimant was awarded the maximum weekly payment, there was no question of fact for the jury or for the court sitting as a jury on appeal. * * *
>
> "In effect, our construction of the 'other cases' provision is that the aggregate amount of compensation shall be determined in the discretion of the Commission, in each case having due regard to the character of the permanent partial disability, and the impairment of wage earning capacity therefrom, as compared with the scheduled cases of permanent partial disability specifically provided for."

In construing the "other cases" provision in *Townsend* v. *Bethlehem-Fairfield Shipyard, Inc.*, (1946), 47 A. 2d 365, the Court of Appeals of Maryland said (at pp. 370-371 of 47 A. 2d):

> "The precise point made by appellant is that the 'other cases' section requires payment 'during the

continuance of such partial disability,' without any limitation except that such payments shall not exceed $3,000. * * * Whether the Legislature intended this or not, there is no means of ascertaining except by the words of the statute. The clear unambiguous words used seem to indicate that it did so intend, and if this were the first time this question was before this Court, we might so hold. The question now, however, is not so simple. It becomes an issue between the two doctrines of stare decisis on the one hand, and constitutional lack of authority in the Court to legislate on the other.

"It is interesting to note that in a number of jurisdictions and states, where similar clauses are in compensation acts, with a limitation, either as to amount, or as to number of weeks, the courts have held that there is no discretion to give less than the limitation. * * * On the other hand, * * * there are a number of states which, by statute, confer upon accident boards and commissions discretion to limit the amount or duration of such payments to a sum or period less than the maximum named. That is the effect of the prior decisions of this Court construing the 'Other Cases' section, which by judicial interpretation, reach the same result achieved in these other states by unequivocal statutory provisions.

In construing the same provision in *Miller* v. *McGraw Co.*, 184 Md. 529, the Court of Appeals of Maryland said (pp. 539-541):

"The preceding paragraphs under the same subsection, captioned 'Permanent Partial Disability,' deal with the loss, or loss of use, of specified members of the body and provide a schedule of compensation on a fixed weekly basis. It is to be noted, however, that the 'Other Cases' paragraph prescribes no such basis or schedule and gives no specific authority to the Commission to fix the number of weeks. * * *

"Although the statute prescribes that these payments shall be made 'during the continuance of such partial disability' and the subsection we are now dis-

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cussing pertains to the type of disability that is 'permanent,' thus indicating, if literally construed, that every claimant under the 'Other Cases' paragraph would ultimately get the limit of $3,000 compensation, this Court has not adopted such a construction. We have held that, in accordance with this paragraph, the State Industrial Accident Commission may fix the amount and the number of weekly payments, and set an aggregate sum less than the statutory limit of $3,000.

"* * * we hold that * * * the Commission may ascertain the amount of compensation on the basis prescribed in the 'Other Cases' paragraph of the statute, as hereinbefore construed, and may fix the number and amount of weekly payments, not to exceed, however, the sum of $3,000 in the aggregate."

3. The date of the judgment of the Court of Appeals of Maryland sought to be reviewed is May 17, 1947, being the date of the issuing by that Court of its mandate in this case. The date of the filing of the opinion of the Court of Appeals of Maryland is April 17, 1947. The date the application for appeal to the Supreme Court of the United States is presented is July 11th, 1947.

4. The jurisdictional provisions relied on, Judicial Code, Section 237(a), as amended (January 31, 1928, c. 14, Sec. 1, 45 Stat. 54), confer jurisdiction on the Supreme Court of the United States to review upon appeal the judgment of the Court of Appeals of Maryland because the case involves, and the controlling question in it is, the constitutional validity of a statute, above quoted, of Maryland, Article 101, Section 48(3), Code of Public General Laws of Maryland, 1939, as amended by judicial interpretation and applied and enforced in this case by the Court of Appeals, the highest Court of Maryland. The ruling of the Court of Appeals of Maryland, and its decision and judgment, were in favor of the validity of the statute as construed. In those circumstances the Supreme Court of the United States

has jurisdiction on appeal. *Standard Oil Co. of California* v. *Johnson*, 316 U. S. 481, *Bountiful Brick Co.* v. *Giles*, 276 U. S. 154; *Cudahy Packing Co.* v. *Parramore*, 263 U. S. 418, *Fiske* v. *Kansas*, 274 U. S. 380, *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, *New York Cent. R. Co.* v. *Bianc*, 250 U. S. 596, *Arizona Copper Co.* v. *Hammer*, 250 U. S. 400.

5. Appellant's contention and claim that the "other cases" provision of the Workmen's Compensation Act of Maryland, as amended by judicial interpretation and applied and enforced in this case, is repugnant to the 14th Amendment to the Federal Constitution for the reasons that, under the statute as construed, the Commission is given unlimited authority and discretion to allow compensation, in an amount less than that required by the provision to be paid, without any prescribed guide, rule, basis or standard reasonably adapted to produce a fair result, and is also given unbridled and definitive discretion to accord claimants discriminatory treatment, involve substantial questions, because appellant's right to adequate and reasonable compensation for his conceded permanent disability depends entirely upon whether the statute may constitutionally be construed and judicially amended in a manner calculated to deprive him of compensation to which the statute as enacted expressly, clearly and unequivocally entitles him. The questions are substantial, moreover, because they arise upon a claim of unconstitutionality which the Supreme Court of the United States in previous decisions has recognized as substantial and valid in applying the principles, here seasonably invoked by appellant, that it is violative of due process of law, as well as the equal protection of the laws, for a statute to delegate to an administrative body unlimited discretion and authority unless they are reasonably restricted by legislative imposed standards wherewith to govern them (*Schechter Poultry Corp* v.

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United States, 295 U. S. 495, *Panama Refining Co.* v. *Ryan*, 293 U. S. 398, *Missouri, ex rel. Gaines* v. *Canada, Registrar*, 305 U. S. 337).

6. The Federal questions sought to be reviewed were initially raised by written answer of appellant filed in the Superior Court of Baltimore City, the court of first instance, to a motion of appellees to dismiss the appellant's appeal to that Court (as authorized by Article 101, Section 70, Code of Public General Laws of Maryland, 1939) from the decision of the State Industrial Accident Commission of Maryland. Under the decision of the Commission, appellant, who sustained an accidental injury arising out of and in the course of his employment by Robb Tyler on February 9, 1945, was awarded compensation for permanent partial disability to his back, resulting from his injury, at the rate of $18 a week for 35¼ weeks, not to exceed, however, the sum of $650, under the "other cases" provision of the Act. Pending the trial in the Superior Court of Baltimore City of the appeal from the Commission, the Court of Appeals of Maryland filed its opinion in the case of *Townsend v. Bethlehem-Fairfield Shipyard, Inc.*, 47 A. 2d 365, in which it held that, in a case compensable under the "other cases" provision of the Act, the Commission had the right in its discretion to limit the amount of compensation to a sum less than the amount required to be paid by that provision, and that if the payments were awarded at the maximum weekly rate stated therein, no appeal would lie from the Commission's decision. Excerpts from the opinion of the Court of Appeals of Maryland in the *Townsend* case, showing wherein it amended by judicial interpretation the "other cases" provision of the Act, are quoted (*supra*) in this statement at pages 3-4.

7. Thereupon the employer and its insurer, Eagle Indemnity Company, moved in writing in the Superior Court

of Baltimore City to dismiss appellant's appeal from the Commission upon the grounds that under the facts of the case no issue as to an amount was authorized, permitted or allowed to be submitted to the jury, that the award of the Commission was not appealable by appellant as he was awarded compensation at the maximum rate allowed by the Act, and that the Superior Court of Baltimore City was without jurisdiction to hear appellant's appeal.

8. In response to the motion to dismiss his appeal, appellant filed his written answer mentioned hereinabove in Paragraph No. 6, and containing the following, among other, averments:

> "III. • • • Further answering the motion the claimant states that it is also his purpose to challenge the constitutional validity of the subsection as interpreted, applied and enforced by the Commission under approval and sanction of the Court of Appeals, because under the facts in his case the application and enforcement of the subsection as so interpreted is arbitrary, capricious and fundamentally unjust.
>
> "IV. Further answering the motion to dismiss, the claimant respectfully shows that the Legislature of Maryland, in enacting the 'other cases' provision of the Workmen's Compensation Act, subsection 3 of Section 48, Article 101 of the Code, has recognized and established the right of compensation to injured workmen, whose disabilities are partial in character and permanent in quality and cognizable under that subsection, by providing that such compensation shall be at a weekly rate to be determined under a fair and reasonable rule as therein stated and payable for a precisely limited time, viz., during the continuance of such partial disability, but not to exceed three thousand dollars, and, subject to reconsideration of the degree of such impairment by the Commission on its own motion or upon application of any party in interest. Thus the Legislature prescribed a scale reasonably

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adapted to produce a fair result in all cases compensable under that subsection. However, by the above mentioned decision and holding (*Townsend v. Bethleham-Fairfield Shipyard, Inc.*), in construction of that provision of the subsection, the effect of which is at total variance to the clear and unambiguous statutory requirements of the subsection, the Court of Appeals has given sanction to an interpretation of the statute by the Commission whereby that body is authorized and permitted to determine the total amount of compensation to be paid under the subsection in an arbitrary, capricious and fundamentally unjust manner, and to fix, determine and award amounts of compensation payable thereunder in a lesser total sum than the amount stated, fixed, determined and required by the Legislature in said subsection to be paid. All this is sanctioned to be done in the uninhibited and unhamalled discretion of the Commission without any guide, standard, basis or rule to be followed or conformed to so as fully and fairly to compensate claimants whose claims are compensable under that subsection. The discretion so recognized in the Commission is wholly in derogation and nullification of the statute's plain mandate and in disregard of its scope, intention and effect, and deprives the claimant of the right to have such arbitrary, capricious and unjust determinations and awards of the Commission reviewed in any manner. The result is that the subsection, as applied and enforced by the Commission under the sanction and with the approval of the Court of Appeals, is repugnant to the 14th Amendment to the Constitution of the United States, abridges the privileges and immunities of citizens, deprives persons of property without due process of law and denies to them the equal protection of the laws, which said privileges, immunities, property and property rights are guaranteed against infringement and impairment by the 14th Amendment and by the 23d Article of the Declaration of Rights of Maryland.

* * * * * * *

"By virtue of the unconstitutional, illegal, arbitrary and unjust authority and prerogatives so conferred upon and vested in the Commission by the aforesaid construction of the subsection by the Court of Appeals, and as the subsection has been in this case applied and enforced by the Commission, and of the power and authority unconstitutionally vested in that body arbitrarily and capriciously to fix, determine and award amounts of compensation payable under the subsection in a lesser total sum than the amount stated, fixed, determined and required by it to be paid, in its uninhibited and unhamalled discretion, and without any guide, standard, basis or rule to follow or conform to in arriving at such amount, the claimant in the instant case has been unconstitutionally, illegally, unreasonably, arbitrarily and capriciously discriminated against by the Commission; his privileges and immunities have been abridged and destroyed; he has been denied and deprived of his rights and property without due process of law and denied the equal protection of the laws, which said privileges, immunities, rights and property are guaranteed him against such abridgement, destruction, denial and deprivation as well as against any infringement and impairment by the 14th Amendment to the Constitution of the United States and by the 23d Article of the Declaration of Rights of Maryland."

9. Appellant's said answer contained the following prayer, among others, for affirmative relief:

"(b) That this Honorable Court rule as a matter of law that the State Industrial Accident Commission, by limiting the amount of the compensation award to the claimant for his permanent partial disability to his back to the sum of $650, instead of making the weekly payments under said award payable during the continuance of such partial disability, but not to exceed three thousand dollars, and, subject to reconsideration of the degree of such impairment by the Commission on its own motion or upon application of any party in interest, as required by the provisions of subsection 3, Section 48,

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Article 101 of the Code, has acted unconstitutionally, illegally, arbitrarily, capriciously and unreasonably and in violation, abridgement and destruction of the fundamental rights of the claimant in that the award was not made in accordance with but in contravention of the said statute, nor made according to a prescribed scale reasonably adapted to produce a fair result and to compensate him for his disability, and therefore abridges and destroys his privileges and immunities, denies and deprives him of his rights and property without due process of law, and denies him the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States and the 23d Article of the Declaration of Rights of Maryland."

10. Appellant's answer to the motion to dismiss his appeal from the Commission contained, further, detailed factual allegations, supported by exhibits in the form of Tables containing a summary and analysis of all cases under the "other cases" provision of the Act decided for a period of a year by the Commission, establishing that the Commission did not follow or conform to any uniform guide, rule, basis or standard in arriving at the total amounts awarded by it to claimants under that provision. Appellant alleged, specifically, that because the Court of Appeals altogether omitted, in its amendatory construction of the "other cases" provision, to lay down any guide, rule, basis or standard to be followed by the Commission in making awards under it, the effect of the statute as thus construed was to permit the Commission to pursue any method which any of the Commissioners saw fit to adopt from time to time. This, appellant averred, rendered the statute, as so construed and as administered and applied, unconstitutional.

11. At the hearing before the trial Court on the motion to dismiss appellant's appeal from the Commission and his answer thereto, appellant in writing proffered to prove

by the member of the Commission who heard and decided the case that upon consideration of the medical reports of physicians for the parties, who rated appellant's permanent partial disability at from 10 to 20% as a result of the injury to his back, she concluded that appellant had sustained a permanent partial disability to his back, as a result of which he had suffered a 20% loss of wage-earning capacity; further, that the Commissioner had allowed appellant compensation at the maximum weekly rate provided by the statute, $18, and had arrived at the total amount of compensation, $650, by applying the percentage of loss of wage-earning capacity found to $3,000, the total amount required to be paid by the "other cases" provision, and by adding $50 for medical bills incurred by appellant, making the total of $650. In his written proffer appellant further tendered to prove his physician's opinion of the nature and extent of appellant's disability resulting from the accidental injury, and filed with his proffer a written report of his physician showing that as a result of a compression type of fracture of appellant's 11th and 12th dorsal vertebrae he had sustained a permanent partial disability of about 20%. The trial Court sustained an objection by the employer and insurer to the introduction in evidence of the testimony proffered by appellant, who duly excepted to that action. A purpose of the proffered testimony of the Commissioner was to show that the Commission, in its awards to claimants under the "other cases" provision of the Act, had made a practice of awarding the maximum weekly amount in each case, and had indicated the percentage of loss of wage-earning capacity found by the percentage of the maximum given as the limit of the particular award. That practice, which the Court of Appeals in the *Townsend Case* (47 A. 2d at p. 372) had expressly and specifically condemned as wrong under the statute, was clearly established by the proffered

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testimony of the Commissioner who heard and decided the case.

12. The trial Court refused all relief prayed by appellant in his answer to the motion to dismiss his appeal from the Commission, granted the motion to dismiss, and entered judgment affirming the decision of the Commission. From that judgment, petitioner appealed to the Court of Appeals of Maryland.

13. In the Court of Appeals of Maryland the federal questions sought to be reviewed were raised in the customary manner in appellant's printed brief filed in that Court and in the oral argument of his counsel to the Court of Appeals. In appellant's printed brief (pp. 5-6), the federal questions were submitted as follows:

> "III. May an administrative body constitutionally be given unlimited authority and discretion to allow compensation for permanent partial disability, under the 'other cases' provision of the Act, to an injured employee, within a certain maximum, without some prescribed guide, rule, basis or standard reasonably adapted to produce a fair result, when said administrative body, in construing and applying the authority and discretion granted it does not allow compensation to injured employees in such manner as reasonably to compensate them for the disabilities sustained?
>
> "It is the appellant's intention, by this contention, to present and preserve the question of whether the 'other cases' provision of the statute, as construed and applied, is valid under the provisions of the 14th Amendment to the Constitution of the United States, and also under the provisions of the 23d Article of the Declaration of Rights of Maryland."

14. In its opinion and decision sustaining the constitutional validity of the "other cases" provision of the Act,

as it was construing and interpreting it, the Court of Appeals of Maryland referred to its discussion of the matter in its opinion in *Allen* v. *Glenn L. Martin Co.*, decided the same day as this case, wherein that Court said (52 A. 2d at pp. 606, 608):

> "The decision of this Court in the case of *Townsend* v. *Bethlehem-Fairfield Shipyard, Inc.*, Md., 47 A. 2d 365, having been filed, the appellees filed in the Baltimore City Court a motion to dismiss appellant's appeal, to which motion appellant answered. • • • Appellant contends • • • (3) that the 'other cases' provision of the statute as interpreted by the decision of this Court in the case of *Townsend* v. *Bethlehem-Fairfield Shipyard, Inc., supra,* is unconstitutional.
>
> "• • • He argues here that to limit it (the number of weeks) otherwise is unconstitutional, in that there is a deprivation to the appellant without due process contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States and of the Twenty-third Article of the Declaration of Rights of Maryland, because the 'other cases' paragraph, as construed, sets up no valid guide or standard whereby a lesser amount may be determined. • • • However, the contention that the statute is unconstitutional is without merit."

15. The Court of Appeals of Maryland further found no error in the trial Court's rulings excluding the testimony proffered by appellant, and in affirming the decision of the Commission, and the Court of Appeals of Maryland, in turn, affirmed the judgment of the Superior Court of Baltimore City. The mandate of the Court of Appeals of Maryland is dated May 17, 1947, and was issued and sent to the trial Court, the Superior Court of Baltimore City, on May 17, 1947. The judgment of the Court of Appeals of Mary-

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land, embodied in its opinion, decision and mandate, is a final judgment.

16. A copy of the opinion of the Court of Appeals of Maryland is hereto appended.

PAUL BERMAN,
SIGMUND LEVIN,
THEODORE B. BERMAN,
Attorneys for Appellant.

APPENDIX

HYMAN

v.

TYLER et al.

No. 101

Oct. Term, 1946

Court of Appeals of Maryland

Before Marbury, C. J., and Delaplaine, Collins, Grason, Henderson and Markell, JJ.

COLLINS, *Judge:*

Frank G. Hyman, claimant appellant, employed by Robb Tyler, and who had been so employed for about two months at an average weekly wage of $50, was injured in the back on February 9, 1945, while loading rubbish on a truck, in the course of his employment. He subsequently filed a claim for compensation with the State Industrial Accident Commission. A hearing was held before that Commission where appellant testified. Dr. H. Alvin Jones examined the appellant at the instance of his attorney, and a report of his examination was offered in evidence before the Commission in which it was estimated that appellant's permanent disability amounted to about 20%. The report of Dr. W. A. Darby was also filed with the Commission by the appellees, in which he estimated that the permanent disability did not exceed ten to fifteen percent. The State Industrial Accident Commission, on October 23, 1945, ordered that Robb Tyler, employer, and Eagle Indemnity Company, insurer, appellees here, pay unto Frank G. Hyman, claimant, appellant here, for permanent partial disability, compensation at the rate of $18 per week, payable weekly, for the period of 35¼ weeks, not to exceed the sum of $650 under "Other Cases." From that award and order the appellant appealed to the Superior Court of Baltimore City.

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Following the decision of this Court in the case of *Townsend* v. *Bethlehem-Fairfield Shipyard, Inc.*, Md., 47 A.2d 365, the appellees filed a motion to dismiss the appeal, to which motion an answer was filed by the appellant. After a hearing before the Trial Court, the Trial Judge granted appellees' motion to dismiss appellant's appeal, affirmed the decision of the Commission, and entered a judgment for the appellees for costs.

The appellant contends here, (1) that the Trial Court erred in refusing to permit the appellant to call Commissioner Simpson, of the State Industrial Accident Commission, to testify as to the method used by her in arriving at the sum of $650, the amount awarded the appellant for permanent partial disability under "Other Cases"; (2) that the Trial Court erred in refusing to permit the appellants to call Dr. H. Alvin Jones to testify as to the nature and extent of appellant's disability; (3) that the interpretation given by this Court as to the "Other Cases" section, Code Supp. 1943, art. 101, § 48, in the case of *Townsend* v. *Bethlehem-Fairfield Shipyard, Inc.*, supra, which decision was applied by the Trial Judge to the instant case, is unconstitutional.

(1) In the case of *Robert Allen* v. *Glenn L. Martin Company and Globe Indemnity Company*, Md. 52 A.2d 605, No. 100, October Term, 1946, filed immediately prior hereto, although we stated that the admissibility of Commissioner Koon's testimony as to the method used by him in arriving at his decision in that case was not before us, we also stated that in general the question whether the determination of an administrative agency is arbitrary is decided from the determination itself and the record in the case and not from the evidence of the members of the agency how it arrived at its decision. In the instant case this question is before us for decision on an exception to the refusal of the Trial Court to permit the appellant to call Commissioner Simpson for the same purpose. We here hold as we intimated in the case of *Robert Allen* v. *Glenn L. Martin Company et al., supra*, that this testimony was not admissible as to the method used by her in arriving at her decision here. *Heaps* v. *Cobb*, Md. 45 A. 2d 73; *Chicago, B. & Q. R. R.* v. *Babcock*,

204 U. S. 585, 594, 27 S. Ct. 326, 51 L. Ed. 636; *United States* v. *Morgan*, 313 U.S. 409, 421, 61 S. Ct. 999, 85 L. Ed. 1429. See also note 17 N.Y.U.L.Q.R., page 269. Of course the commission being a quasi judicial tribunal must act solely on the evidence before it, and not on knowledge or information otherwise acquired by it. *Dembeck* v. *Bethlehem Shipbuilding Corporation*, 166 Md. 21, 170 A. 158; *Bethlehem Sparrows Point Shipyard* v. *Damasiewicz*, Md., 50 A. 2d, 799; *Chicago Junction case*, 264 U. S. 258, 263, 44 S. Ct. 317, 68 L.Ed. 667.

It is true that in the case of *Consolidated Gas Co.* v. *Baltimore City*, 105 Md. 43, 65 A. 628, 121 Am. St. Rep. 553, this Court held that it was competent to inquire from the members of the Appeal Tax Court themselves what were their methods in reaching the assessment they made for the purpose of showing either that it was illegal or excessive. However, this decision was founded largely upon Section 170 of the then Baltimore City Charter which has no application to the present case. Also in the case of *Susquehanna Power Co.* v. *State Tax Commission*, 159, Md. 359, 151 A. 39, it was held that, at a hearing before the State Tax Commission on an original assessment to be made by it, the Commission is under an obligation to state the basis of a proposed assessment, when this is requested in an orderly and appropriate manner; but that a statement by the commission that they had considered the three specified statutory elements was a sufficient statement as to the basis of their valuation, in the absence of a request for a more detailed or specific statement. The rule in these cases was taken from the old case of *Tide Water Canal Co.* v. *Archer*, 9 Gill & J. 479, a condemnation case, and these cases are not applicable here.

The remaining questions were presented to this Court in the opinion filed immediately prior hereto, *Robert Allen* v. *Glenn L. Martin Company and Globe Indemnity Company, supra*, which we will hereinafter refer to in this opinion as the Allen case, and we will therefore refer only to that opinion in our decision on those questions.

(2) The proffer of testimony by Dr. Jones was properly refused in the hearing in the Trial Court, as the only question there was whether the Commission had acted arbitrarily

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in limiting the amount of the award. *Allen case, supra.*

(3) The question of constitutionality here raised was passed upon in the *Allen case, supra,* and it is needless to further discuss it here.

As the amount awarded the claimant in the instant case was the maximum weekly payment, there was no question of fact before the jury or Trial Judge sitting as a jury. The case presented only a question of law as to whether the Commission abused its discretion or acted arbitrarily in fixing the period of time for which compensation was allowed and thereby in fixing the limit of $650. According to the report of appellant's doctor, filed with the Commission, appellant suffered, as a result of this accident, 20% permanent disability. According to the report of appellee's doctor, his permanent disability was not over from ten to fifteen percent. Applying the principles announced by this Court in the *Allen case, supra,* we are not able to find from the record that the State Industrial Accident Commission acted arbitrarily or abused its discretion in making the award. The appeal should not have been dismissed. The Court, however, was correct in affirming the decision of the State Industrial Accident Commission and entering judgment for the appellees for costs. *Allen case, supra.*

Judgment affirmed, with costs.